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SEP 10 2003

GENERAL COUNSEL  
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In the Matter of )

DISTRIBUTION OF THE 1998 AND 1999 )  
CABLE ROYALTY FUNDS )  
\_\_\_\_\_ )

) Docket No. 2001-8 CARP 98-99

**REPLY OF THE PUBLIC TELEVISION CLAIMANTS  
TO OPPOSITIONS OF JOINT SPORTS CLAIMANTS AND PROGRAM SUPPLIERS  
TO MOTION TO STRIKE PORTIONS OF PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW RELYING ON CALCULATIONS  
AND TESTIMONY NOT ADMITTED INTO THE RECORD**

It is unfortunate that the Joint Sports Claimants and the Program Suppliers have taken the occasion of a motion to strike to re-argue the merits of references that were improperly cited in their proposed findings and conclusions. Public Television made its motion to strike because neither JSC Exhibit 56-RX nor 57-RX was admitted as substantive evidence, yet JSC and Program Suppliers use their oppositions to further quote and argue from the substance of these non-admitted exhibits.<sup>1</sup>

JSC and Program Suppliers do not dispute that JSC Exhibit 56-RX was admitted only for impeachment purposes. Further, there can be no dispute that Program Suppliers' findings and conclusions rely on that exhibit as substantive evidence -- stating that "[t]he attitudes of cable operators [are] demonstrated by JSC Exhibit 56-RX . . . ." PS Proposed FOF/COL at 215. Rather, JSC and Program Suppliers contend only that the motion to strike is "irrelevant" (JSC Opposition at 3) and that "no party is prejudiced by [the passages] and

<sup>1</sup> Furthermore, Program Suppliers again quote from JSC 57-RX in their Proposed Reply Findings and Conclusions. See PS Reply F&C p. 19 (second bullet).

exhibit's] inclusion" (PS Opposition at 2). These contentions are not legitimate bases for retaining proposed findings and conclusions that rely on an impeachment exhibit for the truth of its assertions.

JSC and Program Suppliers both argue that they do not cite JSC Exhibit 57-RX for the truth of its assertions. JSC, however, states that the substance of the testimony in JSC Exhibit 57-RX "indicates, that in the absence of must-carry rules, PTV's distant signal carriage would be significantly less than it is today." JSC F&C ¶ 353. This assertion goes beyond showing "the 'state of mind' of PTV," as JSC contends (JSC Opposition at 2). Program Suppliers claim that "[t]he underlying facts aren't important," but then state that "the testimony before Congress speaks for itself." PS Opposition at 2. Program Suppliers' numerous direct quotes from JSC Exhibit 57-RX (PS F&C pp. 216-17; PS Reply F&C p. 19) specifically rely on the document for the truth of the assertions. JSC and Program Suppliers thus do not cite JSC Exhibit 57-RX merely to illustrate a legislative position taken by PTV in 1991, but rather cite the exhibit for the purported truth of the statements in it.

These documents are not important to the ultimate resolution of this proceeding. But they were not admitted as substantive evidence and, in fairness, should not properly be relied on as substantive proof.

### **CONCLUSION**

For the reasons stated above and in PTV's motion to strike, the Panel should strike all passages of PS and JSC Proposed Findings and Conclusions and Reply Findings and Conclusions that quote, cite, or rely on JSC Exhibits 56-RX and 57-RX as substantive evidence.

Respectfully submitted,

A handwritten signature in cursive script, reading "Timothy C. Hester", written in dark ink. The signature is positioned above a horizontal line.

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September 10, 2003

## **CERTIFICATE OF SERVICE**

I, Russell D. Jessee, hereby certify that I have caused copies of the REPLY OF THE PUBLIC TELEVISION CLAIMANTS TO THE OPPOSITIONS OF JOINT SPORTS CLAIMANTS AND PROGRAM SUPPLIERS TO MOTION TO STRIKE PORTIONS OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RELYING ON CALCULATIONS AND TESTIMONY NOT ADMITTED INTO THE RECORD, to be delivered September 10, 2003, to the following claimants participating in these Phase I proceedings:

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September 10, 2003

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GENERAL COUNSEL  
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**Re: Distribution of 1998 and 1999 Cable Royalty Funds,  
Docket No. 2001-8 CARP CD 98-99**

Dear Sir:

Enclosed please find an original, five copies, and an extra copy for date-stamping of the REPLY OF THE PUBLIC TELEVISION CLAIMANTS TO THE OPPOSITIONS OF JOINT SPORTS CLAIMANTS AND PROGRAM SUPPLIERS TO MOTION TO STRIKE PORTIONS OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RELYING ON CALCULATIONS AND TESTIMONY NOT ADMITTED INTO THE RECORD.

Please date-stamp the extra copy of each pleading and return them to the waiting messenger.

Thank you.

Sincerely,



Russell D. Jessee

cc: Phase I Claimant Groups